

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 406

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JOSE R. ABEYTA

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ANY WILLING PROVIDER ACT;
PROVIDING FOR CRIMINAL AND CIVIL PENALTIES AND ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Any
Willing Provider Act".

Section 2. DEFINITIONS. -- As used in the Any Willing
Provider Act:

A. "durable medical equipment" includes iron lungs,
oxygen tents, hospital beds and wheelchairs;

B. "health care facility" means an institution
providing health care services, including a hospital or other
licensed inpatient center, an ambulatory surgical or treatment
center, a skilled nursing center, a residential treatment
center, a home health agency, a diagnostic, laboratory or

1 imaging center and a rehabilitation or other therapeutic health
2 setting;

3 C. "health care insurer" means a person that has a
4 valid certificate of authority in good standing under the New
5 Mexico Insurance Code to act as an insurer, health maintenance
6 organization, nonprofit health care plan or prepaid dental plan;

7 D. "health care professional" means a physician or
8 other health care practitioner, including a pharmacist, who is
9 licensed, certified or otherwise authorized by the state to
10 provide health services or durable medical equipment consistent
11 with state law;

12 E. "health care provider" or "provider" means a
13 person that is licensed or otherwise authorized by the state to
14 furnish health care services or provide durable medical
15 equipment and includes health care professionals and health care
16 facilities;

17 F. "health care services" includes physical health
18 services or community-based mental health or developmental
19 disability services;

20 G. "managed health care plan" or "plan" means a
21 health benefit plan of a health care insurer or a provider
22 service network that either requires an enrollee to use, or
23 creates incentives, including financial incentives, for an
24 enrollee to use health care providers managed, owned, under
25 contract with or employed by the health care insurer. "Managed

Underscored material = new
[bracketed material] = delete

1 health care plan" includes a plan that provides comprehensive
2 health care services to enrollees on a prepaid, capitated basis
3 and includes the health care services offered by a health
4 maintenance organization, a preferred provider organization, an
5 individual practice organization, a competitive medical plan, an
6 exclusive provider organization, an integrated delivery system,
7 an independent physician-provider organization, a physician
8 hospital-provider organization and a managed care services
9 organization. "Managed health care plan" or "plan" does not
10 include a traditional fee-for-service indemnity plan or a plan
11 that covers only short-term travel, accidents, limited benefits
12 or specified diseases;

13 H. "person" means an individual or other legal
14 entity; and

15 I. "provider service network" means two or more
16 health care providers affiliated for the purpose of providing
17 health care services to enrollees on a capitated or similar
18 prepaid flat-rate basis.

19 Section 3. ANY WILLING PROVIDER RULE. --

20 A. Any health care provider that meets a medicaid
21 managed health care plan's reasonable qualification requirements
22 and that is willing to participate in the plan under its
23 established reasonable terms and conditions is entitled to
24 participate as a provider in the plan.

25 B. Any managed health care plan that is offered,

Underscored material = new
[bracketed material] = delete

1 delivered, issued for delivery, continued, renewed or operated
2 on or after July 1, 1997 that violates the provisions of
3 Subsection A of this section shall be null and void.

4 Section 4. CRIMINAL PENALTY AND ENFORCEMENT. --

5 A. An insurer that violates the provisions of
6 Section 3 of the Any Willing Provider Act is guilty of a
7 misdemeanor and shall be punished by a fine of not more than
8 five thousand dollars (\$5,000) or by imprisonment for a definite
9 term not to exceed one year or both.

10 B. Each violation of the provisions of Section 3 of
11 the Any Willing Provider Act, as to each provider and each
12 refusal to comply, constitutes a separate offense.

13 C. If the superintendent of insurance has reason to
14 believe that a person has violated a provision of the Any
15 Willing Provider Act, the superintendent shall refer the matter
16 to the attorney general or another appropriate law enforcement
17 official for enforcement proceedings pursuant to the provisions
18 of Section 59A-2-11 NMSA 1978.

19 Section 5. PRIVATE CIVIL ENFORCEMENT. --

20 A. A person who suffers a loss as a result of a
21 violation of a provision in the Any Willing Provider Act may
22 bring an action to recover actual damages or the sum of one
23 hundred dollars (\$100), whichever is greater. When the trier of
24 fact finds that the party charged with the violation acted
25 willfully, the court may award up to three times actual damages

Underscored material = new
[bracketed material] = delete

1 or three hundred dollars (\$300), whichever is greater, to the
2 party complaining of the violation.

3 B. A person likely to be injured by a violation of
4 the Any Willing Provider Act may seek and be granted an
5 injunction on terms that the court considers reasonable. Proof
6 of monetary damage or intent to violate a right is not required.

7 C. The court shall award attorney fees and costs to
8 the party complaining of a violation of the Any Willing Provider
9 Act if the party prevails substantially in the lawsuit.

10 D. The relief provided in this section is in
11 addition to other remedies available against the same conduct
12 under the common law or other statutes of this state.

13 E. In any class action filed under this section, the
14 court may award damages to the named plaintiffs as provided in
15 this section and may award members of the class the actual
16 damages suffered by each member of the class as a result of the
17 unlawful practice.

18 Section 6. EFFECTIVE DATE. -- The effective date of the
19 provisions of this act is July 1, 1997.